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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,297	09/24/2003	Robert T. Cole	53394.000720	2260

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/668,297	<b>Applicant(s)</b> COLE ET AL.	
	<b>Examiner</b> Jacqueline F Stephens	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/22/04, 10/6/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dragoo et al. USPN 6229061.

Regarding claims 1-5, 22, and 24, Dragoo discloses a package that contains different types of absorbent articles. Dragoo discloses the step of providing a series of at least 2 types of absorbent products (col. 12, line 54 through col. 13, line 6), each

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product type differing from at least one other product type in at least two ways, such as size and absorbency (col. 12, lines 2-66).

Dragoo does not specifically disclose two or more absorbent product designations and conveying an association between each of the two or more absorbent product designations and a combination of one of the size designations and one of the absorbency designations that indicate greater applicability of one type over another. It would have been obvious to one of ordinary skill in the art at the time the invention was made to inform the consumer about what type of absorbent article to use depending on the child and signals displayed by the child so that the consumer would know what type of absorbent article to use. Since the package includes different types of size and absorbent capacities, it is considered obvious to instruct the consumer on what size/capacity is appropriate for different sizes for an appropriate fit or for different absorbency, which may convey stages of toilet training development so that the article can be used efficiently.

With respect to claims 1, 6-45, (a different interpretation from the above rejection of claim 1), Dragoo discloses packaging of different types of absorbent articles. It is well known the art that diapers such as disclosed by Dragoo are sold in many different sizes, such as for premature babies, normal (average) sized babies, older babies (older than 12 months), and toddlers (24 months and beyond). The recited limitation of identifying or marking two or more absorbent product designations wherein each

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product designation is associated with one or more absorbency designations would be within the level of one of ordinary skill in the art since Dragoo provides at least three different absorbent capacities (col. 12, lines 54-66) and it would be obvious for those diapers to also convey three different sizes so the consumer can have a product that fits correctly or alternatively that fits a projected size of the child corresponding with a stage of toilet training or an adult for bladder control. The recited steps of identifying information describing content, size, and/or absorbency is satisfied by the fact that it is well known and obvious to one of ordinary skill in the art at the time the invention was made to provide sizing information on packages of absorbent articles so the consumer can purchase the correct size. The size of the child or adult is an indicator as to the size of the absorbent article that is required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571)272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jacqueline F Stephens  
Examiner  
Art Unit 3761

April 1, 2005